

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

No claims are requested to be cancelled.

Claims 1, 4, 7, 13, 15, and 21 are currently being amended. No new matter is added.

No Claims are being added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-32 remain pending in this application.

In paragraph 2 of the Office Action, Claim 7 is rejected under 35 U.S.C. 112 the Examiner states:

Claim 7 recites the limitation “the weighted sum” in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 has been amended to depend from Claim 6, thereby providing proper antecedent basis. No new matter is added. Withdrawal of the rejection of claim 7 is respectfully requested.

In paragraph 5 of the Office Action, Claims 1-3, 5 & 8-11 are rejected under 35 U.S.C. 102(a) as being anticipated by EP 0 682 419 B1(Tomohiro). The Examiner states:

In regards to Claim 1, Tomohiro discloses a method of selecting link metric measurements from at least one of open loop and closed loop measurements, comprising: sending by a first node a first radio communication (Paragraph 9 & Fig. 1, element “BS”) {Interpretation: the base station in the reference is interpreted as a first node and this transmits a signal}; receiving by a second node the first radio communication over a communication link (Paragraph 9 & Fig. 1, element “MS”) {Interpretation: the mobile station in the reference is interpreted as a second node and this receives a signal transmitted by the base station}; and estimating by the second node the dynamics and condition of the communications channel using at least one of the variance and mean deviation of link metric measurements, the link metric measurements being at least one of symbol error rate (SER), packet error rate (PER), frame error rate (FER), bit error rate (BER), signal to noise ratio (SNR), and received signal strength (RSS) (Paragraph 17) {Interpretation: the reference discloses measuring at the mobile station, the average of received power (mean) and a power difference between the average received power of current period and the previous period (variance)}.

Applicants respectfully traverse the rejection.

In paragraph 6 of the Office Action, Claims 6-7, 12, 16-20, 24-28 & 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomohiro et al. (EP 0 682 419 B1). The Examiner states:

In regards to Claims 6-7,12,16-20, 24-28 & 31-32, Tomohiro discloses a method of selecting link metric measurements from at least one of open loop and closed loop measurements as described above. However,

Tomohiro does not explicitly disclose performing measurements are combined in a weighted sum is based on an interval between updates and the variance of the link metric measurements and combining link quality measurements made on multiple diversity channels. However, it would have been obvious to one of ordinary skill in the art at the time of the invention that there is no criticality in performing weighted sum based on an interval between updates this is a matter of design choice so as to discount a prior measured value and emphasis the most current value. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention that there is no criticality in implementing link quality measurement on multiple diversity channels this is based on the protocol implemented in the communication system. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention that there is no criticality in scaling the metric this is a matter of design choice. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention that there is no criticality in selecting the link quality comprises an indication of link margin, link stability, link performance and excepted latency this is a matter of design choice selecting anyone of the parameters representing the link quality.

Applicants respectfully traverse the rejection.

In paragraph 8 of the Office Action, the Examiner objected to Claims 4 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

To advance prosecution, Applicants have amended Claim 1 for clarity and to include limitations similar to objected to Claim 4. In addition, Applicant has amended Claim 13 to include limitations of objected to Claim 15. Applicant has amended Claim 21 for clarity and to include limitations similar to objected to Claim 4. Accordingly, it is respectfully submitted that Claim 1 and its dependent Claims 2-12, Claim 13 and its dependent Claims 14-20, and Claim 21 and its dependent Claims 23-32 are patentable over Tomohiro.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16 1.17, or credit any overpayment, to Deposit Account No. 18-1722. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 18-1722.

Respectfully submitted,

Date August 28, 2009

By /Joseph N. Ziebert/

Customer Number: 26383

Telephone: (319) 295-8280

Facsimile: (319) 295-8777

Joseph N. Ziebert
FOLEY & LARDNER LLP
Attorney for Applicant
Registration No. 35,421